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Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Afghanistan and on the achievements of the technical assistance in the field of human rights

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the United nations High Commissioner for Human Rights on the situation of human rights in Afghanistan and on the achievements of the technical assistance in the field of human rights, submitted in accordance with the request of the Commission on Human Rights expressed in the statement of the Chairperson of the sixty-first session entitled "Technical cooperation in the field of human rights in Afghanistan".

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Summary

Although many of the benchmarks in the Bonn Agreement have been achieved, the human rights situation in Afghanistan remains of great concern, much of it attributable to the security situation and weaknesses in governance. Factional commanders and former warlords remain major power brokers, and the activities of anti-Government entities and of the Government and international forces combating them continue to take a toll on civilians. Rule of law is emerging only slowly, with reform in the justice sector patchy and impunity often prevailing. Further progress needs to be made in the building of robust State institutions. Rights of suspects, women, children, persons with disabilities, returnees and other vulnerable groups require determined efforts if they are to be effectively protected.

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I. Introduction

1. The present report is submitted pursuant to the mandate established by the Commission on Human Rights at its sixty-first session through the Chairperson's Statement entitled "Technical cooperation in the field of human rights in Afghanistan" (see E/2005/23, chap. I.B). It encompasses my findings on the human rights situation in Afghanistan and reports on the achievements of technical assistance in the field of human rights, particularly with respect to building national capacity. Technical assistance is provided by my Office and other United Nations entities and is described throughout this report.

2. The Office of the High Commissioner for Human Rights (OHCHR) works closely with its field counterpart in Afghanistan, the Human Rights Unit (HRU) of the United Nations Assistance Mission in Afghanistan (UNAMA), and this report was prepared in close cooperation with the human rights officers from that unit. UNAMA-HRU has its headquarters in Kabul with nine international and national staff members while 13 international human rights officers, with national staff support, are spread out in the eight UNAMA regional offices, which are in Kabul, Jalalabad, Mazar-i Sharif, Gardez, Herat, Bamiyan, Kandahar and Kunduz.

3. Observations were made, research was conducted and consultations were carried out with various international and national human rights actors in Afghanistan, including related governmental agencies and departments, the various units in UNAMA, particularly the rule of law and gender units, the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Development Programme (UNDP), the United Nations Development Fund for Women (UNIFEM), the International Labour Organization (ILO), the United Nations Children's Fund (UNICEF), the United Nations Office on Drugs and Crime (UNODC), the World Health Organization (WHO), the Afghanistan Independent Human Rights Commission (AIHRC), and various non-governmental organizations (NGOs).

4. In preparing this report, consideration was given to the findings and recommendations made by the previous independent expert on the situation of human rights in Afghanistan. All of the concerns highlighted in the Secretary-General's recent report on the situation in Afghanistan and its implications for international peace and security (A/60/224-S/2005/525) bear heavily on the human rights situation in Afghanistan. During my visit to Afghanistan in January this year, I acknowledged the many steps towards meeting the goals of the Bonn Agreement in the past three years, but also recalled the need for Afghanistan to continue making bold strides in the area of human rights.

5. While it is recognized that much significant progress has taken place towards building a more democratic nation through the near-completion of the political transition as envisioned in the Bonn Agreement, including a new Constitution and an elected President, the fragile security situation continues to overshadow many of the successes and, together with corruption, hinders many of the efforts to establish, rebuild and reform vital State institutions.

6. Despite some successful disarmament of both the former Afghan Military Forces and illegal militia, a great deal remains to be done. Issues of impunity and accountability remain major concerns. Little progress has been made to date towards bringing to account those most responsible for serious human rights violations

during the decades of conflict, some of whom remain in positions of influence if not authority. In addition, violations continue to be perpetrated with apparent impunity by armed strongmen in many parts of the country.

7. The security situation continues to present a great challenge to the promotion and protection of human rights in Afghanistan. Threats to national security include the continued power of factional commanders and the activities of armed anti-Government entities. The escalating conflict in recent months has resulted in the killing of numerous civilians, including pro-governmental figures and progressive mullahs, as well as electoral candidates and workers, people involved in mine clearance and other humanitarian actors. Reports of human rights violations have been received concerning some of the activities undertaken by national security agencies and international forces, including those of the Coalition Forces, in dealing with such threats and anti-Government activities.

8. Reform in the justice sector has progressed more slowly than hoped for, impacting on the fair and effective administration of justice. The human rights of women and children, although improved, remain a matter of great concern. Given the context in which the Government is tackling a plethora of political, social and economic challenges, the problems of minority and marginalized groups appear at risk of being at the bottom of the list of priorities.

9. Many parts of the country are inaccessible either due to security concerns or poor infrastructure, or both, leading to the isolation of the Afghan population in these areas and making it difficult for human rights actors to monitor and offer protection. In the urban areas, more economic and social activities, and greater freedom of movement, expression and religion may be observed, leading to rapid population growth without the corresponding infrastructural support.

10. Due credit must nonetheless be given to the Government for its efforts under difficult circumstances to build a democratic society that respects the human rights and freedoms of all Afghans, with the support of the international community. The positive impact of the work undertaken by AIHRC is commended. Other national actors, including local NGOs, remain hampered by a lack of capacity and financial and technical support.

II. Rule of law and the administration of justice

11. Afghanistan's formal justice system has, over the past two years, become more functional following training, infrastructural developments and some key legislation. However, it continues to suffer from severe and systemic problems. The justice system still requires structural reform, more qualified and committed officials, adequate legal education, and the necessary administrative tools and physical infrastructure to administer justice fairly and effectively.

12. The absence of strong State institutions, corruption, the ominous influence of warlords and local commanders, and the failure to ensure a secure environment for courts, judicial personnel, victims and witnesses also continues to undermine the capacity of the legal system. All these contribute to the low level of public trust and confidence in these institutions. The lack of adequate detention and correctional facilities and the widespread illegal detention of individuals, especially women and children, continue to raise serious human rights concerns. In rural areas in

particular, customary law and traditional justice mechanisms remain dominant as citizens do not yet have access to State justice institutions.

A. Reform process

13. Improving the rule of law and instituting the fair and impartial administration of justice in Afghanistan require significant and coordinated action and investment. Fundamental institutions, including the Supreme Court and the Office of the Attorney General require reform so that they are able to perform, professionally and independently, the crucial functions they are given in the Constitution. This reform should give impetus and direction to improvements in the structure and functioning of the lower courts and other components of the justice system.

14. Leadership of the reform process has shifted away from the Bonn-mandated Judicial Reform Commission to the Supreme Court, the Office of the Attorney-General and the Ministry of Justice (MoJ). These justice institutions have recently developed a collaborative and productive relationship institutionalized in the Justice Sector Consultative Group (JSCG), chaired by MoJ. Through JSCG, supported by UNDP and UNAMA, a comprehensive National Justice Strategic Framework, entitled "Justice for All", is being developed, building on previous initiatives, which will form the basis of future reform efforts and donor investments.

15. Positive steps towards creating a sustainable flow of qualified and committed personnel into the justice sector have been taken through programmes carried out by the Judicial Reform Commission Law Graduates Training Programme and with the establishment of the Judicial Education and Training Committee within the Supreme Court. The reform of law enforcement institutions is ongoing.

16. Since inadequate justice infrastructure, resources and communications remain a serious concern, the international community continues to assist by providing urgent resource requirements such as computers and vehicles and projects to reconstruct and refurbish justice buildings. MoJ and the Office of the Attorney-General have made progress in restructuring themselves and introducing merit-based recruitment with the objective of improving the quality of the public services they deliver through the Priority Reform and Restructuring Process.

17. The Government has also made a commitment to resume its obligations to report on ratified international human rights treaties after a long hiatus. A treaty reporting project is being implemented whereby an international technical adviser will work in Afghanistan with national staff in the Ministry for Foreign Affairs to advise and assist the Government with its initial reports and to help build permanent reporting capacity within the Afghan administration.

B. Legislation

18. It remains essential to align justice-sector activities under national laws that conform to international human rights standards and to ensure the implementation of norms in the administration of justice that promote and safeguard the rule of law for all without discrimination. Progress has been made in the adoption of essential legislation. Recently, the Law on the Organization and Jurisdiction of the Courts, as well as the new Juvenile Justice Code and the Law on Prisons and Detention Centres

were passed after an extensive period of consultation with the United Nations and donor agencies. Dissemination and implementation of laws are problematic and a series of seminars and training activities are ongoing, organized by UNODC, UNICEF and the Italian Justice Project together with MoJ.

19. The application of the 2004 interim criminal procedure code has been particularly problematic. Although a number of extensive training programmes for judges, prosecutors and police have taken place over the last year in relation to the new law, procedures relating to the investigation, arrest and detention, charging, trial and imprisonment of individuals are rarely adhered to. There is ample evidence that the statutory limits on length of detention and other fundamental safeguards such as the right to legal representation are seldom applied.

20. Although the Constitution and the interim criminal procedure law require the legal representation of indigent defendants, the absence of a strong independent bar and human rights lawyers and of an effective State-funded legal aid system acts as a significant impediment to safeguarding the rights of accused persons and to providing the necessary legal representation for vulnerable groups.

C. Customary law

21. Most Afghans, especially in rural areas, rely on traditional justice mechanisms, although customary law is not part of the formal legal system. Customary law in Afghanistan varies widely by region but significant procedural and conceptual similarities exist throughout the country, particularly the reliance on respected community members, who are trained neither in national law nor in sharia. Despite the positive elements of community and tribal cohesion and accessibility found in traditional mechanisms, there are serious concerns about how women and children are treated. UNDP has launched its European Community-funded Access to Justice at the District Level Project which will seek to enhance the ability of mainly vulnerable groups to access justice, including by addressing the unacceptable elements of traditional justice through increased human rights and justice awareness and skills for religious and community leaders, media campaigns, and education and rights-awareness in schools.

D. National security versus rule of law

22. The necessary balance between maintaining national security and safeguarding human rights which is required in any democratic society is challenged in Afghanistan. The Coalition Forces, special units of the Afghan security agencies, in particular the National Security Directorate (NSD), and the police, have reportedly acted outside the rule of law by engaging in arbitrary arrests and detentions and abusive practices, sometimes amounting to torture. NSD continues to run detention centres with no adequate judicial oversight and very unreliable access granted to the International Committee of the Red Cross (ICRC) and AIHRC. National Security prosecutors and judges do not challenge violations of due process rights committed against persons arrested and detained by NSD.

E. Rights of suspects and those in detention

23. There is continued concern over the lack of due process accorded to suspects. Arbitrary and prolonged pre-trial detention remains frequent throughout Afghanistan. Torture appears to be a common practice in order to secure confessions.

24. Afghanistan continues to be burdened by detention facilities that do not conform to recognized international standards. Although some prison reconstruction is under way through the efforts of UNODC and donors, more resources are required to keep pace with the ongoing reforms within the justice sector. The introduction of the Prisons and Detention Centre Law on 31 May, which incorporates international human rights standards, was an important accomplishment, defining safe, secure and humane detention practices.

F. Illegal detention

25. Military commanders and other local authorities continue to operate private prisons for detaining individuals, usually over land disputes. Based on information provided by AIHRC, the Government has closed down about 36 of these illegal detention facilities. In Laghman, a man from Kunduz was illegally detained in a commander's private prison for four months and was reportedly tortured on a regular basis. Police in the northern district of Faryab have reported that a commander and former district governor severely beat a group of teachers and detained them in his private jail. Where there are no local detention facilities, women accused of crimes are also placed in "private detention", usually in the house of the head of a village, where they are treated as prisoners and forced to work for the family. Further, local authorities have also used official prisons as their own private prisons. It is not uncommon to visit a prison and discover that not all the prisoners have been officially registered. Individuals have been reported to be detained without charges for the purpose of extortion; in one specific case, an individual was detained for two years.

G. Treatment of detainees by Coalition Forces

26. Coalition Forces (CF), particularly in the context of night operations involving forced and violent entry into homes, have provoked community protests. On 26 July at least 1,000 demonstrators outside Bagram Air Base north of Kabul protested the arrest of eight men suspected of anti-Government activities in a nearby village.

27. In other cases, individuals who were captured and later released with no charges have reported abusive acts by CF, including being handcuffed, hooded, earmuffed and roughly handled while being transported to detention facilities. Others have objected to the destruction and theft of their property, forced nudity upon arrival, extended periods of isolation, sleep deprivation, a particularly harsh and arbitrary detention regime, and the inability to communicate with their families other than through an ICRC-administered exchange of censored correspondence.

28. So-called enemy combatants remain in indefinite incommunicado detention without formal charges and are unable to challenge the basis of their detention.

29. On 22 May, UNAMA issued a public statement urging CF to make public without delay the measures that have been taken to eradicate mistreatment and improve conditions of detention. The statement also calls for a role for the Afghan judiciary in ensuring that detainees enjoy the protection of the law and encourages access by AIHRC to detention facilities.

30. Recently, CF implemented a number of initiatives to address these issues and since the beginning of July 2005 detainee releases have been processed through the Government's reconciliation programme *Takhim-e Solh*. Those who participate must pledge to renounce violence and support the Government. Approximately 200 individuals have participated in the programme thus far. In July the United States reached an agreement with the Government to transfer Afghan nationals to the exclusive custody and control of the Ministry of Defence. AIHRC has expressed some concern over the ability of Afghan law enforcement agencies to deal with these detainees according to the law as well as the issue of independent access to detention facilities.

III. Transitional justice

31. A notable feature of the transition in Afghanistan is the failure thus far to effectively tackle impunity, either for past or current crimes. Many Afghans complain that armed strongmen continue to dominate their local communities.

32. In Afghanistan, the difficulty of breaking with the past should not be underestimated, especially because elements of previous regimes and armed groups continue to exert influence on the political environment. However, during 2005, some promising steps have been taken towards a long-term, comprehensive strategy that, if implemented, will address the needs and recognize the rights of victims, serve justice and achieve reconciliation.

33. Following receipt by President Karzai of the AIHRC report "A Call for Justice" in January 2005, his advisers, in collaboration with AIHRC and UNAMA, developed an action plan to implement a national strategy for transitional justice. The plan includes five mutually reinforcing elements: public symbolic measures to acknowledge the suffering of victims and families, institutional reform, truth-seeking and documentation, promotion of reconciliation, and the establishment of meaningful and effective accountability mechanisms. Importantly, the plan states that in accordance with international standards there will be no amnesty for war crimes, crimes against humanity and other gross human rights violations and that there will be no impunity for perpetrators of the most serious crimes.

34. The draft plan was discussed at a conference held in The Hague on 6 and 7 June 2005 attended by the Foreign Minister of Afghanistan and other senior Government officials, as well as representatives from other Governments, AIHRC, OHCHR and UNAMA. The Government is commended for undertaking this open consultative process. Members of the international community expressed strong support for the plan, including for the view that it should be implemented as a whole, with the elements being mutually reinforcing.

35. The United Nations will support efforts by the Government to tackle impunity and deal with the terrible legacy of past armed conflict. Any transitional justice mechanism must be carried out with the active and meaningful participation of all

national stakeholders. Special attention must be given to ensuring the active participation of women in the process. UNAMA holds regular meetings on transitional justice with NGOs and other members of civil society.

36. Some of the suggested actions begin with proposals for further consultation on the idea of a truth-seeking and reconciliation mechanism. In this context my Office will be organizing in late 2005 a workshop in Kabul on truth-seeking and reconciliation, in line with the national transitional justice action plan. Leading up to that workshop, country-wide consultations will take place to ensure that the views and opinions of different sections of Afghan society are heard and taken into account in arriving at the most suitable mechanism to help Afghans acknowledge and respond to the needs of victims, deal with past crimes, undertake institutional reform and move forward with nation-building on a more solid foundation. A mapping exercise and report prepared by my Office and shared with the President and AIHRC in January 2005 is an initial contribution towards the development of a comprehensive historical record of what happened during the periods of conflict, as envisioned in the action plan. The mapping report may also prove useful in the efforts to vet, from a human rights perspective, nominations for public office positions. My Office will support Government endeavours in this respect.

IV. Situation of women

37. The situation of women in Afghanistan has improved only in certain respects in the post-Taliban period. Government policy towards women has changed significantly for the better and women's participation in the electoral process is welcomed.[1] Also, women have a much greater presence in the paid workforce, particularly in the cities,[2] and the increased enrolment of women and girls in schools and universities has been well documented. However, the stark reality is that women in Afghanistan, especially outside of Kabul and urban areas, and particularly among the poor, are generally still viewed as the property of men. The mistreatment of women in Afghanistan has deep roots which will require determined efforts to overcome. The fact that some women are speaking out against the violence perpetrated against them is nonetheless encouraging.

38. Widespread and persistent human rights violations against women and girl children that the Government still needs to address are as follows.

A. Forced/early marriages[3]

39. Women (and men) are commonly forced into accepting the marriage partners chosen for them by their families, and widows can only marry the brother or cousin of the deceased husband. Girls as young as 7 years of age are made to marry much older men, sometimes 30-40 years older. This happens for different reasons: they are sold off by their families to obtain bride money to settle debts or to ease the burden of the family, or they are given away as compensation in the settlement of disputes, particularly blood disputes, as determined through informal justice mechanisms. Girls are also married off to "protect" them from being raped by or forcibly married to warlords and local commanders and girls, even unborn ones, are also promised to other families to maintain friendly relations or as a gift for assistance provided to the family.

40. There are regular reports of cases of self-immolation (85 by AIHRC this year) that are partially attributed to child and forced marriages. In some instances, failed attempts at murdering girls and women by immolation have been alleged to be suicide attempts.

B. Crimes against the person

41. These include murder in the name of honour, trafficking and prostitution, abduction, rape and other sexual and domestic violence suffered at the hands of various power-holders, including husbands and male relatives. Women who go against their traditional roles of daughter, wife and mother, be they political candidates, human rights activists and defenders or students, also have to endure sexual harassment and other threats and intimidation.

C. Discrimination in the justice system

42. Access to justice for women is lacking. The minority of women willing to report the crimes perpetrated against them risk being ignored, accused of committing sexual offences, detained arbitrarily, tried unfairly and/or returned to the husbands or families responsible for the crimes. Offenders are rarely prosecuted for crimes against women, and any sentences handed down are light or of no consequence. The testimony of women is not given due weight as compared to that of men even where the latter are the accused. Moreover, customary law denies justice to women. Women are detained for violating social mores and as substitutes for their husbands or male relatives who have been convicted of crimes.

43. Specific cases that reflect the various human rights violations described above include the abduction of a 12-year-old girl by a 20-year-old neighbour who was alleged to have repeatedly raped her. Both were charged with adultery and, although an agreement was reached for their release on condition that they marry, they have not been released as the girl's father demands a girl from the other family in compensation, in accordance with tradition. In Badakshan, a woman was beaten and hanged to death by her relatives as a result of a decision by local mullahs and elders who ordered her to be killed by stoning for the crime of adultery.

44. Many of the initiatives taken by the Government at the policy level, with the support of other international and national actors including UNIFEM and UNDP, are expected to gradually improve the human rights situation for women. These efforts include the development and eventual implementation of the National Action Plan for Women following the Beijing Platform for Action and the establishment of an inter-ministerial task force on combating violence against women. Notable as well is the Coordination Cooperation Commission which looks into the issue of safe houses for women. AIHRC continues to conduct workshops on the Convention on the Elimination of All Forms of Discrimination against Women, Islam and women, and the role of women in social and political affairs.

45. Commendable efforts by officials to help change society's perception of women and their position in the community at regional and local levels include the appointment of the first female governor in Bamiyan, the opening of a driving school for women and the appointment of women as heads of department (other than in the Department of Women's Affairs) in Herat and the establishment shuras

constituted by women, providing a forum for discussion of women's health, education and welfare, in Panjsher, Logar and also in Herat.

V. Situation of children

A. Child labour, child kidnapping, child trafficking

46. Many children are deprived of education as they are forced to work, even as young as 6 years old, in labour-intensive sectors or to beg on the city streets in order to provide for the family. Child labourers are also at risk of being used for drug trafficking or kidnapped for forced labour and sexual exploitation. It is believed that many Afghan children remain at risk of exploitation, and that child kidnapping and trafficking cases are greatly underreported. Many families are now too afraid to allow their children to go to school.

47. The Child Protection Action Network and the Committee to Counter Child Trafficking led by the Ministry of Labour and Social Affairs (MoLSA) are responsible for the situation of children in Afghanistan. Since the approval by the Cabinet of the National Plan of Action to Combat Child Trafficking, among the steps taken by the Government include the issuance of a presidential decree in July 2004.[4] Last year, 211 victims of child trafficking were intercepted and rescued by the police as a result of this decree. AIHRC continues to conduct workshops on the Convention on the Rights of the Child.

B. Child soldiers

48. Children, especially those from 14 to 17 years old, have been recruited and trained as soldiers during the war by different factions. Military forces have reported that Taliban militants in the south, south-east and east of the country continue to recruit young boys, forcing some families to provide a son to serve in their ranks.

49. A demobilization and reintegration programme led by UNICEF has seen a total of 4,756 child soldiers demobilized since the beginning of 2004. Around 8,000 child soldiers are expected to participate in the programme, according to UNICEF. Following a community reintegration approach, other war-affected children such as street or working children, internally displaced children and child returnees will also benefit from the programme. The reintegration programme includes the promotion of educational activities, a skills training and employment programme and livelihood support.

C. Children in detention

50. Children as young as 11 years old can be arrested and imprisoned in Afghanistan for minor crimes such as theft, and once arrested, they are sometimes detained with adults in prison. Some of these children go through the justice system without having proper legal representation. AIHRC reported that 625 children are detained at juvenile correction centres. Conditions of detention fall below international minimum standards in the majority of the juvenile centres in

Afghanistan. It is also common to see infants and children being detained in prison with their mothers, who have been incarcerated for crimes.

51. With the new Afghan Juvenile Code 2005, which incorporates provisions of the Convention on the Rights of the Child, the age of criminal responsibility has been raised from 7 to 12 years old. It is illegal to impose a life sentence or the death penalty on a convicted child under the Juvenile Code. A child is no longer allowed to be detained in the same lock-up as adults and must be granted the right of a defence counsel and interpreter once detained. The trial of a juvenile offender shall be conducted by a juvenile court, which shall be established in all provincial capitals.

D. Right to education

52. A significant push to increase primary school enrolments has raised the enrolment of boys to 67 per cent and girls to almost 40 per cent. However, school enrolment among Afghan girls remains among the lowest in the world, with less than 10 percent of girls enrolled in secondary school. Disparities in enrolment between urban and rural areas remain stark. Among the reasons for the low school enrolment in rural areas are insufficient learning spaces that are close to home and inadequate teachers, in terms of both quality and quantity, especially among female teachers. Families are reluctant for safety and cultural reasons to allow girls to go to school. Girls also leave school to help their mothers who have become widows and also when they marry and/or have children.

VI. Electoral environment

53. Around 6,200 candidates, including 629 women, were initially nominated for the parliamentary and provincial elections scheduled for September 2005. According to UNAMA-AIHRC reports,[5] there is a broad perception that the electoral process is taking place against a backdrop of intimidation and violations of political rights. This perception is shaped by recollections of past abuses carried out by local strongmen who continue to wield influence and the existence of candidates accused of having committed human rights violations and criminal acts.

54. The goal of disarming 60,000 ex-combatants belonging to the Afghan military forces was achieved by the disarmament, demobilization and reintegration process. The disbandment of illegal groups process is a follow-on programme to disband illegal militia who remain armed. During the vetting of candidates the Electoral Complaints Commission provisionally excluded 208, requiring them to fully disarm and sever links to armed groups by participating in this programme. After adjudicating 1,144 challenges and following up on the implementation of the requested disarmament, the Commission excluded 17 candidates from the final list, 11 of them identified as still linked to an unofficial armed group. The fact that the vast majority of the provisionally excluded candidates were restored led to disillusionment with the process. Further candidates may nonetheless be disqualified by the Commission for breaching the electoral law.

55. The increasing anti-Government attacks continue to serve as the greatest impediment to the exercise of political rights in the south-east and south of the

country and have already resulted in a number of injuries and casualties, including the killing of three candidates, four pro-Government religious leaders and three electoral workers.

56. While women were mobilized and encouraged to register by their communities and families to support candidates in the elections, ambivalence continues in the society with regard to women public figures. Female candidates, particularly independents, have problems raising the amount of money required for campaigning. Women exercising their political rights are particularly vulnerable to violence, social restrictions and limited access to information as well as mobility restrictions. On a positive note, during the latest registration process the percentage of women registered in some of the more traditional areas of the country was higher, especially in the south and south-east.

VII. Economic, social and cultural rights

A. Impact of poverty

57. According to the *National Human Development Report 2004*, Afghanistan is the seventh poorest nation in the world. One of the main causes of poverty is the denial of human rights through discrimination, marginalization, unequal access to education, health or other resources, socio-cultural traditions that restrict women's opportunity as well as corruption within the Government. Those who are living in poverty are often vulnerable to further human rights violations such as deprivation of adequate food, shelter, health care and education. Poverty is further entrenched by the weakness of institutional governance and insecurity, which in turn affect investments that could have provided more job opportunities.

58. A rights-based approach to poverty reduction provides for a more transparent, inclusive and participatory process and is empowering by ensuring that programmes are accountable to the people who are their targets. One of the more successful programmes aimed at increasing sustainable livelihood opportunities and community empowerment is the Afghan National Solidarity Programme.

B. Right to work

59. The main reasons for high unemployment in Afghanistan are discrimination based on gender, disability and ethnic grounds, lack of job opportunities or economic activities, and the lack of required skills and qualifications. Some of the main challenges faced in the areas of employment and economic growth in Afghanistan are the lack of entrepreneurial skills, knowledge and technology, lack of an enabling environment, lack of support services and lack of access to capital and financial services.

60. ILO in Afghanistan seeks to build the capacity of the Government, employers and workers' organizations and provides technical assistance to MoLSA, which includes assistance in implementing the National Skills Development Programme, in promoting employment opportunities for disabled persons, and assistance with the revision of the 1987 Afghan Labour Code.

C. Access to health care

61. Owing to the exceptionally high maternal mortality rates in Afghanistan, UNICEF recently declared a state of acute emergency for the women and children. About 20 per cent of Afghan children die before their fifth birthday and about 1,600 out of every 100,000 Afghan mothers die while giving birth or because of related complications. UNICEF has estimated that 700 children below the age of 5 die each day and 80 per cent of these deaths are due to preventable diseases. Women in Afghanistan are 60 times more likely than women in developed countries to die from pregnancy-related conditions. The life expectancy of Afghans is 44.5 years (with a healthy life expectancy at birth of only 33.4 years) and with men living longer than women.

62. WHO reported that one third of the health professionals are concentrated in the province of Kabul, where only 7 per cent of the population live. However, according to the Ministry of Public Health (MoPH), a basic package of health services is presently available across 77 per cent of the country geographically. The lack of female doctors means that rural women continue to be deprived of basic health care as they are too ashamed or not allowed by their spouses or male guardians to be treated by male doctors. Insecurity in the country has also prevented many women, especially those in rural areas, from travelling outside their homes to seek health care.

63. Thirty-one persons are reported to be living with HIV/AIDS in Afghanistan although MoPH has estimated that the actual number could be between 600 and 7,000. One in five people suffers from mental health problems. The opportunities for psychosocial support are almost non-existent.

64. According to a 2004 report by the Government, only 23 per cent of the people have access to safe water and only 12 per cent have access to adequate sanitation. Children are most at risk.

D. Housing and land rights

65. The inability to manage land and property issues in a fair and equitable manner is an ongoing issue impinging upon the enjoyment of the right to property as described in article 40 of the Constitution and other related rights. Insecurity of land ownership is due to many factors, including the ambiguity of legislation promulgated by successive regimes, the lack of clear policies for land allocation by the Government, contending urban master plans enacted by municipalities, and the general lack of capacity of significant institutions such as the Ministry of Agriculture and the law courts. In Afghanistan, judicial officials simultaneously arbitrate disputes and act as land administrators by issuing and validating title documents and maintaining ownership records. The judiciary is frequently accused of corruption in property cases. Consequently, the majority of land and property disputes are mediated by the non-formal justice sector. The authorities have failed to implement the recommendations of a Government-established independent commission to regularize land ownership in Shirpur village in Kabul and to prosecute officials involved in the unlawful transactions which resulted in forced evictions. Residents still living there remain under threat of forced eviction by

powerful landlords who have illegally appropriated land at below market rates since 2003.

66. The unequal distribution of land in Afghanistan is combined with a situation where land is often insufficient to meet subsistence requirements. Vulnerable groups such as households headed by women, nomadic peoples, internally displaced persons as well as returnees, among others, are at a distinct disadvantage in obtaining security of tenure, in addition to access to pasturelands and water. An underlying system of discrimination based on socio-economic status further reinforces their vulnerability. The establishment of the Special Property Disputes Resolution Court in 2002 tasked with resolving property disputes involving returned refugees attempted to redress this inequality; however, disputes continue to be addressed by the district and provincial courts and through Afghan customary law, not always to a returnee's advantage.

VIII. Other vulnerable groups

A. Rights of persons with disabilities

67. It is estimated that there are 2 million people living with disabilities in Afghanistan; 84 per cent are believed to be unemployed and only 25 per cent are disabled as a result of war, either by direct participation in the war or as a result of landmines. As a result of prenatal complications such as malnourishment, insufficient medical facilities, pregnant wife-beating and drug addiction, children are increasingly being born with physical and mental defects.

68. Persons with disabilities continue to be deprived of equal access to public places and there are no facilities for the blind and hearing impaired in schools; these serve to further marginalize persons with disabilities. A growing number of disabled persons have begun to show their dissatisfaction with the Government's lack of effort in improving their welfare through demonstrations organized by disabled people's organizations. Many of those who are disabled as a result of participation in the war feel that they have not been given sufficient attention despite having fought for the country.

69. The mandate of the Ministry of Martyrs and Disabled (MMD) has been expanded to include new policies to safeguard the best interests and protect the rights of all disabled persons, regardless of the cause of their disability. An intergovernmental policy working group has been established at MMD to draft policies on disability issues. While it is encouraging that the Government appears to be taking a more rights-based approach in its policies related to persons with disabilities, until these policies take effect, the rights of disabled persons to an adequate standard of living must nonetheless be ensured. AIHRC has developed a three-year action plan on the protection and promotion of the rights of persons with disabilities which includes capacity-building, data collection, and public awareness and advocacy programmes aimed at enhancing the rights of the disabled.

B. Refugees, returnees and internally displaced persons

70. Since 2002, approximately 4 million Afghan refugees have returned, including about 2.7 million from Pakistan. Following return, they are faced with challenges of reintegration and re-establishing livelihoods. By and large, the problems faced by returnees are not very different from those faced by the rest of the population, as discussed elsewhere in this report. The following issues do, however, appear to affect returnees more than others in the given context.

1. Land and housing

71. Returnees find greater obstacles in seeking to reclaim their land or property. Problems range from small disputes over property, often between members of an extended family, to multiple ownership titles as well as illegal occupation and confiscation of property by others. Problems of landlessness and lack of housing facilities pose a significant challenge to sustainable returns.

2. Women

72. Many of the women returnees bring back a better education than is generally available to women in Afghanistan and the experience of an environment with fewer restrictions and greater employment opportunities for women. Some therefore encounter difficulties after return owing to the contrast with their previous lives in the countries of asylum.

3. Documentation

73. Educational or academic qualifications received in countries of asylum are not always recognized by Afghan authorities, making it harder for students, teachers, health professionals and the like to obtain entry into schools, universities and the workforce.

74. At the beginning of 2002, there were an estimated 1 million internally displaced persons (IDPs). At the end of 2004, it is reported about 130,000 persons remain displaced. While the IDP population cuts across all ethnic groups, the majority of them are Pashtuns, including those displaced from the north-west by persecution, and Kuchis, a nomadic group. The remaining IDPs are largely concentrated in Zhare Dasht, Panjwai and Maiwand in the south and in Maslakh in the west. These settlements of IDPs are supported by the Government and international agencies.

75. More favourable climatic conditions, the positive impact of disarmament, changes in the administration and an expansion of the national army and police forces have had a positive impact on the human rights situation in the areas of origin of IDPs, leading to increased opportunities for return. The situation of the IDPs has generally stabilized and many have attained self-reliance, although human rights abuses perpetrated by local commanders such as illegal taxation, forced recruitment and illegal land occupation remain a problem in some areas.

76. UNHCR works alongside the Ministry of Refugees and Repatriation in providing assistance and facilitating solutions to refugees, returnees and IDPs with the support of many other international and national actors. A lot more needs to be done to enable further returns and the sustainability of these returns.

C. The Kuchi

77. The Afghan National Vulnerability Programme identifies the nomadic Kuchis as one of the five most vulnerable groups. Article 14 of the Constitution obliges the State to implement effective programmes for "improving the economic, social and living conditions" of nomads as well as adopting "necessary measures for housing and distribution of public estates to deserving citizens". Those obligations have yet to be fulfilled. The Kuchis fled persecution in late 2001 after the overthrow of the Taliban. They lost their livestock and pastures in the drought that began in 1999 and became the largest single group of displaced persons in Afghanistan.

78. Kuchi representatives claim that the Government has failed to honour its commitment to provide them with adequate political representation, mobile schools for their children, clinics and potable water.

IX. Capacity-building of the Afghanistan Independent Human Rights Commission and non-governmental organizations

A. Afghanistan Independent Human Rights Commission

79. AIHRC, which has developed in the past three years into a functional organization with 11 offices and more than 400 staff across the country, has become increasingly effective in promoting and protecting the human rights of Afghans across the country, especially those of women, children and the more at-risk population. Its programmes also include monitoring, investigation of complaints and incidents, human rights education and transitional justice. Recently, it has begun a programme to address the needs of people with disabilities. AIHRC consistently issues public reports and statements on the human rights situation in Afghanistan.

80. OHCHR, together with UNAMA and UNDP, have continued to support AIHRC through a joint technical cooperation project that has been extended to the end of 2005. The programme provides a range of advice and technical services. Since April 2005 UNHCR has been working with AIHRC on monitoring the human rights situation, particularly in areas with significant levels of refugee and IDP returns.

81. Two female and two male AIHRC staff members have been selected to participate in two training programmes on the prevention of conflict and the prevention of torture organized by OHCHR and other project partners for national human rights institutions of the Asian-Pacific Region as part of a global project to strengthen the capacities of these institutions through distance and regional training.

B. Non-governmental organizations

82. As local NGOs remain hampered by a lack of capacity and financial and technical support, my Office plans to build their capacities so as to create a more dynamic and vocal civil society that can play its proper and important role in the protection and promotion of human rights.

X. Conclusions and recommendations

A. Conclusions

83. **The holding of parliamentary elections is one of the final benchmarks in the Bonn process. However, the political achievements, although crucial, are not a full measure of progress towards a society in which human rights are respected and protected. No matter how many elections are held in Afghanistan, the people will not be able to enjoy their human rights until the rule of law is a fact, impunity is a feature of the past, State institutions are credible and effective, and women are treated equally with men. Enjoyment of human rights is a key indicator of the transition of a nation from a state of armed conflict to one of peace and stability.**

84. **The Government is commended for all the accomplishments it has achieved and, together with the international community, it needs to continue making bold strides in human rights. All the Afghan people must also be empowered, be they men or women, abled or disabled, or members of one or another ethnic group, to enable them to assert and claim their rights; only then human rights are more readily respected, protected and fulfilled.**

B. Recommendations

1. General

85. **The Government and the international community should protect the rights of civilians who are affected by the continuing armed conflict in parts of the country, in accordance with international human rights and humanitarian law.**

2. Rule of law and the administration of justice

86. **The international community should continue giving support for reform and the strengthening of the judicial sector, including reform of the Supreme Court and the Office of the Attorney General, merit-based recruitment and training of judicial officers, and rehabilitation of the infrastructure.**

87. **International human rights standards should be applied in practice in the formal and non-formal justice sector.**

88. **The Government should expand the recruitment of women judicial officials and create conditions that facilitate women's ability to perform their functions, particularly in provincial capitals.**

89. **There should be a concerted inter-ministerial programme to address issues of land and property reform, with particular emphasis on vulnerable groups, households headed by women, nomadic peoples, internally displaced persons and returnees, among others.**

90. **The Government, with the support of the international community, should establish a mechanism to address intimidation and violence against members of the judiciary as well as witnesses.**

91. **The Government and the international community should ensure that the treatment of those arrested in anti-terrorists operations is fully in accordance with international human rights and humanitarian standards.**

92. **The Government and the Coalition Forces should also provide access to AIHRC, in addition to ICRC, to all detention facilities for the purpose of monitoring the conditions and legality of detentions.**

93. **The international community, including the United Nations, should support the Government in realizing its commitment to implement and report on its international human rights treaty obligations.**

3. Transitional justice

94. **The Government should implement the National Action Plan for Transitional Justice.**

95. **The international community should contribute materially and through political support to transitional justice measures, including addressing impunity.**

96. **The Government should refrain from appointing persons who have violated human rights to any public positions and should institute appropriate mechanisms to ensure that known human rights violators are not able to hold public office.**

4. Situation of women

97. **The international community should support the Government in eradicating violence against women and encourage a concerted campaign to address violence against women, both through educational and legal measures.**

98. **The Government and the international community should support initiatives of women's organizations to end violence against women and the establishment of shelters.**

99. **The Government should improve women's access to justice, including reform of legislation to comply with international human rights standards.**

100. **The international community should support the establishment of a network of defence lawyers specializing in women's issues with the aim of providing legal defence in each provincial capital.**

5. Situation of children

101. **The Government and the international community should take steps to prevent forcible or involuntary recruitment of child soldiers.**

102. **The Government should increase efforts to ensure that children, particularly girls, are able to attend school and that the percentage of girls attending secondary school is increased.**

6. Economic, social and cultural rights

103. The Government and the international community should implement a human rights-based approach to addressing social and economic issues, including attaining the Millennium Development Goals.

104. The Government and the international community should improve the human rights situation of disabled people through the reform of the Ministry of Martyrs and Disabled, and other programmes.

7. Capacity-building of AIHRC and NGOs

105. The international community, including the United Nations, should continue to support AIHRC.

106. The international community should support initiatives to strengthen civil society groups, with particular emphasis on NGOs promoting human rights and women's rights.

107. The international community should support a dedicated programme to monitor the justice system through national and international NGOs.

Notes

[1] Out of approximately 12 million voters registered for the parliamentary elections, 42 per cent are women and women make up almost 10 per cent of the candidates for the elections, numbering 577.

[2] According to available estimates, women make up 30 per cent of the agricultural sector, 17 per cent of the non-agricultural sector and 20 per cent of the civil service.

[3] According to available estimates, child marriages make up 43 per cent of all marriages and 23 per cent of all women who are married or in union are between 15 and 19 years of age.

[4] This decree provides for capital punishment for child traffickers. In 2003, the Commission on Human Rights called on the Afghan authorities to declare a moratorium on the death penalty in light of procedural and substantive flaws in the Afghan judicial system.

[5] Upon request of the Government and endorsed by the Berlin Conference, AIHRC and UNAMA jointly verify the exercise of political rights during the electoral process. The exercise was launched in 2004 for the presidential elections. Three reports were published in 2004 and three more in 2005.